

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

October 13, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: All present
Staff: Carrington, Cuciz, Fujimoto, Heyden and Lindsay

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**IV.
APPROVAL OF MINUTES
September 22, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of September 22, 2004.

Staff requested a change to page two of the minutes to include the text of the additional Special Condition added to Item No. 5 (Use Permit No. UP2004-25):

Prior to issuance of certificate of occupancy, the applicant shall provide proof that there is a City of Milpitas General Plan and Midtown Specific Plan prominently displayed on the premises and shall be referred to each homebuyer. (P)

Motion to approve the minutes as amended.

M/S: Sandhu/Giordano

Abstention: Garcia

AYES: 5

NOES: 0

**V.
ANNOUNCEMENTS**

There were no announcements.

**VI.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 2, 3 4, 5,
6, 7, 8 and 14**

A memo was distributed to the commissioners from Mr. Fujimoto recommending five additional conditions to be added to item 14.

Chair Lalwani opened the public hearing on Consent Item Nos. 2, 3, 4, 5, 6, 7, and 8.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 2, 3, 4, 5, 6, 7, and 8.

M/S: Giordano/Garcia

AYES: 6

NOES: 0

Vice Chair Garcia asked a question on consent item number 8. He wanted to know if the applicant would be coming back with a revision of their plan. Mr. Lindsay indicated they intend to come back with a revised project plan, however, this will not happen for several months.

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5, 6, 7, 8 and 14.

***2 MAJOR TENTATIVE PARCEL MAP NO. MA2004-2:** A request to subdivide an existing 44,465 square foot industrial building into twenty-one (21) condominium units for individual ownership, located at 991 Montague Expressway (Fleming Business Park) (APN: 086-31-059), zoned Heavy Industrial (M2). Applicant: Tim Nguyen. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2380) (*Recommendation: Approval with Conditions*)

***3 USE PERMIT NO. UP2004-20 AND "S" ZONE APPROVAL AMENDMENT NO. SA2004-77:** A request to install a two-sided complex ID and directory freestanding monument sign measuring 10' x 4'-6" located at 1000 Ames Avenue (APN: 086-31-054), zoned "M2" Heavy Industrial. Applicant: Sign Classics. Project Planner: Cindy Hom, (408) 586-3284. (PJ# 2390) (*Recommendation: Approval with Conditions*)

***4 USE PERMIT NO. UP2004-23:** A request to locate a dental laboratory at 40 North Victoria (APN: 029-13-014), zoned Administrative and Professional Office (CO) district. Applicant: Keith Tae Kim. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2393) (*Recommendation: Approval with Conditions*)

***5 USE PERMIT NO. UP2004-26:** A request for a reduction of two parking (2) spaces required by the ordinance for a bank locating in an existing retail tenant space at 139 Ranch Drive (APN: 022-53-003), zoned "C2" General Commercial. Applicant: Wells Fargo Bank. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2394) (*Recommendation: Approval with Conditions*)

***6 "S" ZONE APPROVAL AMENDMENT NO. SA2004-73 AND USE PERMIT NO. UP2004-19:** A request to install three (3) panel antennas behind the rooftop parapet and associated mechanical equipment atop the Crown Plaza Hotel located at 777 Bellevue Drive (APN: 086-47-002), zoned "HS" Highway Services. Applicant: Sprint PCS. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2385) (*Recommendation: Approval with Conditions*)

***7 USE PERMIT AMENDMENT NO. UA2004-7 and "S" ZONE APPROVAL AMENDMENT NO. SA2004-76:** A request to remove and replace three (3) telecommunication panel antennas on an existing monopole and addition of ground mounted equipment located at 1010 Ames Avenue (APN: 086-31-055), zoned Heavy Industrial (M2). Project Applicant: Nextel/Crown Castle. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2389) *(Recommendation: Approval with Conditions)*

***8 PLANNED UNIT DEVELOPMENT NO. PD2004-1, "S' ZONE APPROVAL NO. SZ2003-11 AND USE PERMIT NO. UP2003-37** *(Continued from September 22, 2004)*: A request for a residential Planned Unit Development with a maximum density of 216 senior and multifamily units, including two, 5-story buildings for the senior development with associated site improvements which include development standard deviations and a use permit for a parking reduction on the properties located at 75 Montague Expressway and 1696 South Main Street (APN's: 086-34-017, -019 and -020), zoned "R4" Multifamily Very High Density. Applicant: USA Properties Fund. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 3165) *(Recommendation: Note Receipt and File)*

***14 "S" ZONE AMENDMENT (SA2004-89):** A request to have an outdoor display or for-sale products at the front of the Ocean Supermarket, 2 South Park Victoria Drive (APN: 088-04-078), zoned Neighborhood Commercial (C1). Applicant: Ocean Supermarket. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

VIII. PUBLIC HEARING

1. USE PERMIT NO. UP2004-16 AND MITIGATED NEGATIVE DECLARATION NO. EA2004-7:

Troy Fujimoto, Project Planner, presented Use Permit No. UP2004-16 and Mitigated Negative Declaration No. EA2004-7, a request for A request for approval of a 2,450 square foot religious facility, a parking modification, and the adoption of a mitigated negative declaration in an existing building at 380 Montague Expressway.

Commissioner Giordano asked if the parking requirement has always been one space per five seats. Mr. Fujimoto said yes this is the requirement for religious uses. Commissioner Giordano asked if staff accounted for future growth of the church. Mr. Fujimoto replied yes and stated that there is adequate parking, based on their peak usage and the time that other tenants use the parking area.

Vice Chair Garcia requested clarification on the proposed change in the temporary ordinance prohibiting non-industrial uses of industrial facilities. Mr. Lindsay stated there is an item about quasi-public uses that will be heard by the commission this evening and a moratorium will be considered by the City Council on October 19th. The use described in this item does fit within the definition of a quasi-public use within an industrial zoning district. Staff is seeing more of these types of applications for religious facilities and other types of assembly. Staff believes that this is a legitimate policy question to put before the commission and City Council to consider whether or not these uses should be continued in the industrial area and if so, perhaps there should be a distance requirement so that there will not be an undue concentration of these uses. Staff is asking the Planning Commission to provide direction to study the issue on a later item and staff has also asked the City Council to consider an emergency ordinance, which would impose a temporary moratorium on approving these types of uses in the industrial area, until staff has had time to study it. As it relates to this particular application, the moratorium and direction from the commission on the later item would not affect this application. Staff has structured the moratorium ordinance so that it would not affect applications that are currently pending. Vice Chair Garcia commented that these applications are essentially getting in under the wire. He also asked if there are other applications now where this is the case. Mr. Lindsay said yes.

Chair Lalwani opened the public hearing on item 1.

Pastor Tim Wynn, 377 Paseo Refugio, stated this his organization has performed a risk assessment as required. Based on the results of the Hazardous Material Management Plan review and Immediate Dangerous Life and Health study, it is unlikely that the church or individual services would be impacted by worst-case release of chemicals from the neighboring facilities. In addition, the neighboring facilities appear to be in compliance with environmental agencies and past releases were not identified, therefore there is a low potential of a catastrophe in this area of the proposed Next Generation Christian Fellowship.

Commissioner Mohsin asked about the condition that, "prior to occupancy that applicant shall complete a risk assessment"; and asked if that is what the pastor had just presented. Mr. Fujimoto said he believes so, however, staff has not had a chance to review it yet. Commissioner Mohsin asked if this item would be coming back to the Planning Commission. Mr. Fujimoto said no, however, the recommendations in the study are required to be followed by the applicant and staff will verify that this occurs.

Motion to close the public hearing on item 1.

M/S: Sandhu/Galang

AYES: 6

NOES: 0

Motion to approve Use Permit No. UP2004-16 and Mitigated Negative Declaration No. EA2004-7.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

9. REVIEW OF STREETSCAPE PLANS FOR MAIN AND ABEL STREETS

Mr. Lindsay noted that this item was continued from the August 25th Planning Commission meeting as the commission had asked that this item be reagendized to obtain addition information for businesses near the Serra Center about a raised median along Abel Street. Mr. Lindsay stated that the information has been provided in the packets as well as staff's responses to issues brought up at the community meeting. There were some concerns from businesses and property owners at the August 25th meeting in the vicinity of the Serra Center. They were concerned about a planned raised median that would block existing turning movements. Staff stated that a traffic consultant studied the area and the original median plan has been modified to address the concerns.

Kevin Wyse, President of Wyse Civil Engineers, stated that he studied the area and prepared traffic counts and studied turning movements. The prior proposal had the intersection of the Serra Center driveway at Abel Street restricted with the landscape median. He noted that after traffic counts were summarized, it was determined that there are enough existing traffic turning movements to open up the intersection and provide basically the same turning movements that the Serra Center has now. He stated that he met with business owners and addressed their concerns. He also noted that Mr. Lindsay received an e-mail from George Donovan voicing his support for this modification.

Commissioner Giordano thanked staff for bringing back the questions and answers from the community meeting. She asked if the city would be requesting contributions from all developers and what formula would be used for this calculation. Mr. Lindsay stated that two projects are being considered at this point (Main St. and Able St.) and the reimbursement or developer contribution for these improvements will be looked at in terms of scope and timing. For instance, the large project on Able will have a developer contribution. When looking at Main Street and the improvements being considered in front of the senior housing, medical clinic and library, the Redevelopment Agency will cover all of those costs. At this point, it is envisioned that that RDA would continue to play a role in funding streetscape improvements where these are being used as an economic tool for development to occur. If large-scale developments similar to KB Homes occur on Main St. then it's very possible that the City would be looking for developer cooperation to leverage funds. At that point, the City would look at the percentage of street frontage and the scope of the project. There is not a quick and easy formula to use as it depends on the nature and timing of the submittal. Also, there are some private properties on North Main that will benefit from an improved street frontage and the city will not be seeking reimbursement from those properties if they choose to redevelop in the future north of Carlo – this would be an example of the opposite end of the spectrum.

Vice Chair Garcia asked about the left turn going southbound onto Able and if this will still be available as concerns were received about this turn. Mr. Lindsay said yes it will still be available. Mr. Wyse clarified that the left turn movement into that center today is illegal. Providing a sole left turn pocket into that center would potentially have some safety issues in terms of backing up into the Serra intersection. The numbers were not significant enough to prevent a U-turn from happening. Vice Chair Garcia asked if business owners are aware of this and if there are any objections. Mr. Lindsay stated that staff has met with one tenant and gave him six copies of the plan to distribute to other tenants. Staff also made attempts to meet with other tenants but there were some language barriers; and to date, staff has not received any additional responses so the assumption is that it's okay.

Commissioner Galang asked how the ongoing maintenance costs would be funded. Mr. Lindsay stated that additional funding would be needed to maintain the level of improvements that staff is considering along Main and Able streets. The general fund cannot fund those improvements and the long-term maintenance of them. Staff is looking for additional sources of revenue to fund the maintenance costs. The additional sources being looked at include revenue from Lighting Landscape Maintenance and Community Facilities Districts or other types of assessment districts that would have all properties in the area contributing to the benefit that they are enjoying from the enhanced streetscape. The improvements are providing benefits citywide, but also specifically to the properties in the area. Staff is continuing to research funding sources.

Motion to recommend approval of the Main and Abel Streetscape plans to the City Council.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

10. ELMWOOD DEVELOPMENT PROJECT WORK SESSION

Mr. Fujimoto provided a brief overview of the Elmwood Development Project, proposal by the applicant to construct 683 new residential units and change the land use designation of 20± acres located on the west side of South Abel Street from “General Commercial” and “Parks and Open Space” to “High Density Residential.”

Denise Cunningham, KB Homes South Bay Inc., stated that they have already held one community meeting and heard concerns about parking. She noted that there will be two space garages as well as parking for guests. There will also be rules about parking for homebuyers. There are several locations for public access to parks and parking. She noted another concern from the meeting about a buffer area for the homes and noted there would be a buffer area of about 70 feet including the road and landscaping to the front doors. She also noted that this community would be gated to prohibit commercial traffic. She stated that KB Home will continue to work closely with the City they also plan to go back to the PRCRC on November. 2nd.

Commissioner Mohsin noted the large scale of the project and her concern about guest parking. Ms. Cunningham stated their plan for parking follows all city requirements. David Obitz, KDG Group, noted that the condominium portion of the project east of Able will have a total of 711 spaces for residents and guests and the total guest parking for condominiums is 93 spaces. The complete parking data for the entire project is included in the submittal. He stated that the town homes and single-family homes would have a total of 736 garage spaces and 111 guest spaces. Commissioner Mohsin asked if this is the appropriate ratio. Mr. Fujimoto stated they are required to provide 15% guest parking and their plan appears to have provided this. Commissioner Mohsin noted her concern about parking problems throughout Milpitas.

Commissioner Mohsin asked about public parks and the potential to develop tot lots. She noted that the plans mention four playgrounds. Vice Chair Garcia noted that there is a tot lot next to Able where there is heavy traffic and he asked this will be screened about security. Ray Panek, KB Home South Bay Inc., noted that wrought iron fences are typically used so there is visibility, but there is also security.

Vice Chair Garcia noted that this lot is the furthest from units on the west and asked if there is a chance of moving it to the middle. Mr. Panek stated that a difficulty of the site is the geometry of it and they are working to achieve a better circulation and wanted to keep these spaces near public rights of way.

Vice Chair Garcia asked about screening from the jail and living in such a close proximity to it. Mr. Panek stated that his group had spent time at the jail with the Sheriff and that it is a quiet existence. He stated there are only one half dozen units facing the jail and a buffer has been provided including landscaping and 80 feet of Hetch Hetchy. There is a need to screen it, however, there are limits on what can be planted on Hetch Hetchy; for example, they must use shrubs as trees are not encouraged.

Commissioner Sandhu asked about the proposal for a gated community. Mr. Panek stated that gates are proposed to discourage commercial traffic. Commissioner Sandhu asked where the new signal would be location. Mr. Panek stated that they worked with the city's traffic section and a traffic engineer and determined that putting the signal near the Post Office is the best option.

Commissioner Sandhu noted that the plans show various small parks, not one large park. He asked what total acreage of parks is. Mr. Panek stated that there would be 6.5 acres in public parks and, combined with private improvements, about 13 to 14 acres.

Chair Lalwani asked what is being counted as part of a park area. Ross Doyle, RJA, noted that the 6.5 acres are the Hetch Hetchy segment east and west of Able and the Elmwood segment north of Curtis.

Commissioner Galang asked about the initials KB. Mr. Panek stated that KB Homes is the new name of a company formerly called Kaufman and Broad.

Commissioner Galang asked about amenities and if there would be an indoor gym. Ms. Cunningham stated that there would be a pool and recreation center as well as open space; however, there is not an indoor gym.

Commissioner Galang asked if there is a separate entrance to the single-family homes. Ms. Cunningham stated that the primary entrance is off Able and the area can also be accessed off the existing road that will be improved and widened, as well as the existing road running along the other side of the Hetch Hetchy. Commissioner Galang asked if there would be fencing around the community. Ms. Cunningham said yes, and this is primarily to prevent vehicular access. Commissioner Galang asked if the garages are covered. Ms. Cunningham said yes.

Commissioner Giordano asked a question about the EIR and the flood plain, as the other residential communities in that area pay flood insurance. She asked if the new homes would be required to pay flood insurance. Ms. Jensen with RJA stated that when the grading is done and the homes are built, the first finished floor would be built above the base flood line; then a letter would be sent to FEMA, which would then remove the homes from the flood area.

Commissioner Giordano asked about the rational of entry gates, as there are not entry gates at the project by the Great Mall. Mr. Lindsay stated that Park Metropolitan project next to the Great Mall does not have entry gates, however, the MonteVista apartments across the street from the mall does have them.

Commissioner Giordano asked about Palmer Street. Mr. Panek stated that there were discussions about this area. This is an isolated neighborhood and there is a preference not to have commercial traffic going through. Commissioner Giordano asking about Palmer Street abutting an existing neighborhood that does not have parks and her concern that some of those residents may like to use those facilities. She noted a successful project near Dixon and I 880 where the park was put more centrally within the complex. She asked about the ratio of residential units to the amount of park space that is plan. Mr. Lindsay stated that this touches on a bigger issue. The Dixon Landing project was built on a suburban model, however, what KB Homes is proposing is more urban and is consistent with what the City is looking for in the downtown area. The park design is more linear, however, the requirements for open space are being met, but it is a different open space model.

Commissioner Giordano asked what the lot sizes are for the single family detached homes. Mr. Panek stated that the lot size is less than 3,500. Commissioner Giordano asked about the width of the street and if there is room to park and pass around cars. Mr. Panek stated that no parking would be allowed and the streets are 20 feet wide, in addition to a 5-foot apron to the garage door; also, there are parking pockets placed on ends of streets. Commissioner Giordano stated her concern about no parking in front of single-family homes. Mr. Panek stated that this is a product that has come through in San Jose. Commissioner Giordano asked about the mix of a variety homes. She asked about creating more open space, raising the density and not having single-family homes.. Mr. Panek stated that it was designed this way due to market studies and they also want to have some differentiation from what already exists on Able. He noted that these units are for a different life style with a bigger floor area and that it is a better priced product. Commissioner Giordano suggested the elimination of Elm Park on one side and bringing that to the central area to allow for a more user friendly park which would makes sense for the community in it's entirety.

Chair Lalwani asked about the triangle park and noted that people residing on the furthest end are at a disadvantage. She asked if this could be split to accommodate another triangle park on the other side or near the center. Mr. Panek stated that there is a private park space in the middle with the idea that one side would be using private amenities and folks from the other neighborhood would use the park in their area. Chair Lalwani asked about the park area near the pool and if it is a park or a green area. Mr. Panek stated that he wouldn't call it a park, as it is a lawn area. He noted there is a clubhouse with restroom facilities, a kitchen, and a community meeting room, and they are working on putting a play structure there. Ms. Cunningham noted that she spoke in error earlier and there is a gym in the recreation center for the condominiums.

Chair Lalwani asked if a price range for the single-family homes has been determined. Mr. Panek stated that the starting price will be determined the week before sale, however, they are targeting some ranges along with an affordable component. He noted that their proformas are starting around \$350,000 for condominiums; \$400,000 to \$425,000 or higher for townhomes and in the \$500,000 and higher range for single-family homes.

Chair Lalwani noted that this is a work session and thanked everyone for their comments.

**11. AMENDMENT TO
THE 2004 PLANNING
COMMISSION
MEETING SCHEDULE**

Mr. Lindsay presented a request to reschedule the November 10th Planning Commission meeting to November 17th.

Motion to reschedule the November 10th Planning Commission meeting to November 17th.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**12. AMENDMENT TO
THE PLANNING
COMMISSION
BYLAWS**

Mr. Lindsay presented a request by staff to amend the bylaws to provide more flexibility in scheduling special meetings. He noted that a phrase within section 7.02 restricts items that the Planning Commission could consider outside of normal meeting dates.

Commissioner Giordano asked what prompted this issue. Mr. Lindsay stated it was found in the bylaws while looking into moving the Planning Commission meeting date to November 17th, which would then be considered a special meeting. The bylaws are currently structured so that the Planning Commission can only consider non-legislative items at special meetings.

Motion to amend the bylaws to provide more flexibility in scheduling special meetings.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**13. DISCUSSION OF
PROPOSED ZONING
TEXT AMENDMENTS**

Mr. Lindsay presented a request for direction on proposed zoning ordinance text amendments that would allow tutoring centers as a conditional use in the Highway Services district and impose distance requirements for quasi-public uses in the industrial zoning districts. Mr. Lindsay stated that there are two items where staff is looking for direction. The first item he addressed is the issue about tutoring centers. When the zoning ordinance was originally written, tutoring centers were not addressed in the code. The code has since been amended to allow tutoring centers in other zoning districts, but the HS was not considered at the time of those amendments. Staff is finding some tutoring centers that would like to locate within the HS district, specifically the Minnis office building. Staff believes this area would be appropriate for these types of uses as a conditional use, however, before preparing an ordinance amendment, staff would like to ask for direction and to bring the issue back to the commission at their next meeting. Specifically, staff is requesting to amend the zoning ordinance to allow the HS district to have tutoring centers as a conditional use.

Mr. Lindsay stated that the second item where staff is looking for direction relates to quasi-public uses within industrial areas. The zoning ordinance defines quasi-public uses as recreational, charitable, medical, non-profit, educational, youth and senior oriented facilities, private hospitals and religious uses that primarily serve the general public. Staff is finding that in the current industrial real estate market the rents are lower making it attractive for service and non-profit organizations. These are the types of uses that are conditional within the zoning districts. This calendar year, staff has requested that these types of uses perform risk assessments so that they can be aware of the hazards in the area and for awareness of the costs associated with being in the zoning district. The risk assessment needs to be updated every year because businesses around them can change. Staff is seeing more applications for these areas and has put together a map showing the quasi-public uses currently located within the city for the commission to review. Mr. Lindsay noted that there is an undue concentration of these types of uses within the industrial district. Staff is asking the commission for direction regarding coming back with a zoning amendment to look at a potential distance requirement. This issue has been put on the City Council agenda on October 19th for consideration of an urgency ordinance, which would be a temporary moratorium on quasi-public uses within the industrial area. If adopted by four fifths of the City Council it would last for 45 days unless the City Council chose to extend it. If it were adopted, staff would advertise a public hearing for the last City Council meeting in November to extend it. A text amendment will help provide some certainty to the businesses so that staff can tell them earlier about the requirements. This would also protect the integrity of existing business parks.

Vice Chair Garcia noted that he is happy to see this effort underway. He stated that it is important to review this and the concept of noting where the city does not want quasi-public uses in the future. He also noted the issue of a potential for lawsuits.

Joe Callahan, developer of Oak Creek Business Park and the Town Center, stated that the concept behind this proposal is good; however, there are several issues that need to be considered. He stated that many of the buildings constructed in the 1970s or 1980s are now functionally obsolete and there would probably be a lot of teardowns and different future uses. The current ordinances have specific standards for the types of uses allowed as well as addressing safety matters. The standards for hazards are good. He asked a question about the map prepared by staff.

Mr. Lindsay stated that the map shows the quantity of quasi-public uses within the industrial areas and what a one thousand foot buffer would mean. This requirement could be less than 1,000 feet or more. The reason that staff picked 1,000 feet is that within the midtown area quasi-public uses are limited to 1,000 from each other.

Mr. Callahan noted that with an increase in the population there would be an increase in demand for quasi-public uses and these provide community benefits. He cautioned the Planning Commission to not overreact and put something in place that would limit business and social activities.

Commissioner Giordano asked if staff is requesting a moratorium. Mr. Lindsay said no, staff is asking the Planning Commission for direction to do further study which will be brought back to the commission. He stated that this could be in the form of an ordinance amendment. Commissioner Giordano stated that from a legal standpoint the city has allowed these uses up to today and she is concerned about developing parameters now. She asked on what grounds does the city have to do this. She also noted that the Economic Development Commission has discussed this same topic and their feedback should be part of the solution.

Kit Faubion, City Attorney, noted that there are two points where staff is asking for direction from the Planning Commission. The question is whether or not the city should continue to review these applications on a case-by-case basis or if the city will regulate them differently. The same issues continue to be raised with the quasi-public use applications within the industrial district and it may make sense to establish a regulation to provide certainty. Staff is not proposing a solution at this point; they would like to initiate a study and this would come back to the commission with the background information. Commissioner Giordano stated that she could support a study, but not the radius of 1,000 feet. Ms. Faubion stated that the radius of 1,000 feet is more of an example that could be used as some sort of a buffer. Commissioner Giordano asked if staff needed the commission's approval to begin a study. She noted that staff could already research information. Mr. Lindsay stated that on several occasions staff has sought direction and feedback before presenting ordinances to the commission. He noted that the research involves significant staff resources and instead of making that commitment independently, staff desired to feedback up front. This is a significant issue and how the city chooses to address it is the question. Mr. Lindsay noted that staff could bring back a variety of alternatives and involve the Economic Development Commission as suggested.

Commissioner Sandhu asked if there is a requirement in the midtown plan. Mr. Lindsay said yes and stated that he agrees that some of the activity is very important for the city's diverse community. Mr. Sandhu stated that he does not see any need for a study and thinks that applications should be reviewed on a case-by-case basis.

Commissioner Mohsin asked who would be involved in this study and what type of study would be conducted. Mr. Lindsay stated that staff would look at further refinement of the map presented and would provide the commission with a detailed report of the process for a quasi-public use applicant and the ongoing monitoring process. He noted the impact on existing industrial businesses regarding potential increased insurance rates and liability.

Jason Wu, San Jose Christian Assembly, 123 Dempsey Road, stated the concern from his organization as they are in the process of moving in Milpitas and have gone through the application process. He noted that if restrictions are made this could be seen as religious discrimination against their use of the building. His organization is aware of the religious and land use law that President Clinton signed into affect in 2000. Mr. Lindsay noted that there are two concerns the speaker referred to about their application, which is still pending application Council to consider on October 19th. Within the ordinance, section three shall not apply to received applications as of the day the ordinance

Mr. Lindsay noted that none of the action the commission makes tonight would directly affect the church's application. What could affect the application is the moratorium that staff has asked the City

As currently drafted, section three of the ordinance shall not apply to received applications as of the day the ordinance becomes effective and staff has listed the church's application which would be exempt from a temporary moratorium if it was put in place. Kit Faubion stated that RILUPA says you cannot discriminate against religions or treat them differently from other places of assembly. The study that staff is proposing does not focus on churches or any type of religious assembly, rather it focuses on quasi-public uses as defined, which includes 23 various uses. It's clear that the city is not trying to keep churches from going anywhere. She does not believe this is a RILUPA issue.

Motion to approve the first portion of item 13 allowing tutoring centers as a conditional use in the Highway Services zoning district area.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Commissioner Giordano stated that in looking at uses it is good to have a match for an industrial site that is vacant. Organizations have benefited from this such as churches and Kaiser. She is not certain that there is a problem and does not want to limit industrial landowners unless there is rezoning. She is in favor of having staff converse with the Economic Development Commission. She asked staff to come back one more time and they could look at this issue with input from the Economic Development Commission.

Commissioner Galang asked about imposing 1,000-foot radius and if this means that the city is limiting a similar business. Mr. Lindsay stated that the map shows uses within a 1,000 ft radius. If an applicant wants to locate within 1,000 feet of a similar use, they are not allowed to do so if the ordinance was amended in this manner.

Vice Chair Garcia stated that it is important to study this issue and would like further research from staff, however, he is concerned about impacts to existing businesses insurance rates and liabilities that can occur. He noted the need to protect existing businesses and that there does have to be some certainty for them. He noted that from an economic standpoint the study needs to be completed, as well as looking at quasi-public uses that have already been approved.

Commissioner Mohsin would like to see a study completed and have a deeper understanding of the impacts on businesses.

Motion for staff to conduct a detailed study on quasi-public uses in the industrial zoning districts.

M/S: Mohsin/Garcia

AYES: 4

NOES: 2 (Giordano/Sandhu)

Commissioner Sandhu asked what the study would cost. Mr. Lindsay stated that staff would conduct the study with no consultant costs.

There being no further business, the meeting was adjourned at 9:47 p.m. to the next regular meeting of October 27, 2004.

**IX.
ADJOURNMENT**

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Holly Cuciz
Recording Secretary